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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 18 August 1997, at 3 p.m.

Chairman: Mr. MAXIM
(Rapporteur)

later: Mr. GUISSÉ
(Chairman)

later: Mr. WEISSBRODT
(Vice-Chairman)

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PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES
(continued)

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Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.98-13920 (E)

In the absence of Mr. Guissé, Mr. Maxim, Rapporteur, took the Chair.

The meeting was called to order at 3.10 p.m.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (continued) (E/CN.4/Sub.2/1998/18)

1. Mr. KIRKYACHARIAN (Movement Against Racism and for Friendship Among Peoples (MRAP)), recalling the Nazi attempts to divide people into categories for the purpose of excluding, and ultimately exterminating, certain segments of society, said he questioned the appropriateness of the term "minority", particularly in a human rights context, since only Fascists and fundamentalists used the term in a numerical sense.

2. The stance of the Serbians on Kosovo was untenable and their argument amounted to mere sophistry and manipulation of numbers. Milosović had made the Kosovo Albanians foreigners in their own country after abolishing Kosovo's autonomous status, following a referendum in which the majority of the electorate were Serbs. The Albanians had not only been socially and economically excluded, their very citizenship had been denied. They were not a "minority", they were an occupied people deprived of sovereignty.

3. Similarly, the Armenians of Nagorny Karabakh were not a "minority" in Azerbaijan, but a part of Armenia, while the Azeris of Nakhitchevan were not a minority in Armenia, while but were simply Azeris. Kurdish nationalism, and the brutal attempts to suppress it, could be explained by Turkey's long-standing denial of the existence of the Kurds who were known as "mountain Turks".

4. Since use of the term "minority" often concealed a refusal to accord equal rights to all citizens, the Sub-Commission should focus not on "minorities" as such, but on the "unequal treatment" of persons. The responsibility of the United Nations was political, not sociological or anthropological.

5. A cultural approach to "minority" issues typically involved treating persons not as citizens, but as mere subjects or folkloric curiosities for the entertainment of the majority. Peoples everywhere were rejecting that label which locked them into a static past. They were demanding equality. Before condemning guerrilla movements outright, it was thus worth considering whether everything had been done to ensure their civic and social equality.

6. Mr. Guissé took the Chair.

7. Mr. KHALIL, having congratulated the Working Group on Minorities on the excellent report on its fourth session (E/CN.4/Sub.2/1998/18), said that the increased participation of non-governmental organizations (NGOs), representatives of minority groups and scholars was to be welcomed. The Working Group had focused on some pertinent issues, including a discussion of the difference between "assimilation" and "integration". State observers would no doubt find further clarification of the scope of those terms useful.

8. He welcomed the recommendations of the Working Group, particularly those that should continue to focus on thematic issues and that steps should be taken to ensure more active participation by States in forthcoming sessions. Despite a reference to the procedure governed by Economic and Social council resolution 1503 (XLVIII), the Working Group evidently did not view itself as a body dealing with conflicts but rather as a forum for identifying avenues for reconciliation and promoting understanding. The role of the media in protecting minorities should be further stressed. While the suggestion that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities should be translated into as many languages as possible was a welcome one, the importance of the audio-visual media must not, however, be neglected in view of the high rates of illiteracy among some minorities.

9. Mr. WIEBALCK (Christian Solidarity International) said that armed conflict and persecution in many parts of the world arose from the inability of the international system to protect minority rights adequately. The international community had "stood idly by" during the Rwandan genocide, and yet another African genocide was currently under way in the Sudan. Since 1983, more than 1.5 million people had died and over 5 million others had been displaced in the borderlands between northern and southern Sudan, where Muslim Beja, African Christian and Animist Dinka communities had previously coexisted in peace.

10. The extremist National Islamic Front (NIF), which had seized power from a democratically-elected Government, had declared a jihad against the ethnic and religious minorities that had resisted Islamization. The 3 million-strong Dinka community was a particular target. His organization had been a witness to the famine orchestrated by the Khartoum regime and to the displacement of hundreds of thousands of people.

11. The accusations levelled against his organization by the Observer for Sudan on Friday, 14 August 1998 were blatantly false. The NIF's extensive propaganda machinery even included a member of the British House of Lords, but numerous fact-finding trips in recent months had provided overwhelming evidence of chattel slavery, which had been further corroborated by the well-documented reports of the outgoing Special Rapporteur, as well as by independent international journalists and television crews. Members of the relevant working groups were urged to visit the Sudan, with his organization, to collect their own first-hand evidence of the NIF's use of slave raids to destroy the social fabric of the Dinka people.

12. The 3 million-strong Beja tribe of the north-eastern Sudan were also victims of the NIF's jihad. The Beja, who inhabited a vast territory on the Red Sea coast and predated the arrival of the Arabs in the Sudan, had their own distinctive language and nomadic way of life and had resisted NIF efforts to impose an imported, totalitarian ideology. The Beja were a marginalized people whose interests had been neglected by successive Sudanese Governments. The NIF had turned that neglect into violent hostility, selling the Beja's fertile ancestral lands to wealthy supporters and conscripting young Beja tribesmen systematically into the regular army and Popular Defence Force. Beja people travelling to and from the markets were robbed, villages bombed and detainees tortured. The effect of those policies had been to keep the Beja territories on the verge of famine and to dislocate communal life.

13. The international community must force the NIF regime to stop its jihad against its own people and particularly the ethnic minorities. To that end, the United Nations should insist on access for human rights monitors to all parts of the Sudan, investigate credible reports of NIF's persecution of religious minorities and support the initiatives of the National Democratic Alliance and its partners to promote the values and institutions of civil society, including peace and reconciliation in the conflict areas.

14. Mr. BHAN (Himalayan Research and Cultural Foundation), having recalled that any doctrine of racial or religious differentiation or superiority was scientifically false, morally condemnable, socially unjust and legally inadmissible, said that Pakistan's discriminatory policies against Ahmadis, Christians and other minorities were well-known, as were its terrorist activities in the Indian State of Jammu and Kashmir.

15. There had been hundreds of killings of Kashmiri Hindus since the beginning of the year in the villages of Wandhama, Prankote, Chapnari and Shana-Thakraie, with 36 persons murdered in Chamba that very month. Governments must be called upon to dismantle the legal and constitutional structures that encouraged intolerance and permitted discrimination.

16. Mr. ROSSI (International Association for Religious Freedom) said that any group professing a religion different from that of the majority should be considered a religious minority under national and international law, even if it shared the ethnic, linguistic or other characteristics of the majority.

17. The new Iranian President Khatame had thus far failed to improve the situation of the persecuted Baha'i community in Iran. So far in the current year, four members of that religious minority had been arrested because of their faith and a Baha'i had been executed on 21 July 1998 for converting a Muslim woman.

18. In Jammu and Kashmir, more than 1,500 members of the Hindu minority, mostly intellectuals and professionals, had been killed, and 20,000 houses destroyed. On 25 January 1998, 30 masked terrorists had arrived in the village of Vandahama near Srinagar. Most of the 300 houses there belonged to Muslims but they had identified four houses belonging to Hindus, where they had murdered 23 people, including nine women and four children.

19. In Europe, there was also evidence of growing intolerance and persecution of religious minorities. In January 1996, the French Government had published the Guyart Report listing 172 sects regarded as dangerous. On the recommendation of the report, the Government had organized an extensive publicity campaign, causing the members of many religious minorities to feel both marginalized and stigmatized.

20. A parliamentary committee in Belgium had identified 189 churches, religious movements and organizations as "sects". There had been an outcry from Evangelical, Baha'i, Mormon and Buddhist communities, which complained of discrimination and slander, maintaining that their religions were authentic faiths respectful of both the law and human rights.

21. If a religious group was dangerous and failed to respect the law, then the State had a duty to intervene, but care must be taken not to confuse respectable religious minorities with "dangerous sects".

22. Mr. WONG (International Association for the Defence of Religious Liberty) said he was appalled by the lack of international concern regarding the ethnic cleansing and genocide minorities in Myanmar were suffering at the hands of the military regime, which had wiped out all villages that were not under the direct physical control of an army camp.

23. The second largest ethnic group in Myanmar after the Burmans themselves were the 7 million Karen, about 300,000 of whom had been internally displaced as a result of the destruction of their villages. Many were hiding in the jungle where they died of disease and malnutrition. About 100,000 Karen had fled to refugee camps in Thailand where they were regularly attacked from across the border by Myanmar troops.

24. The troops had also committed numerous atrocities against the Shan minority people, forcing villagers to relocate and/or massacring them. Tens of thousands of Shan villagers were struggling to survive in relocation sites where they were used as forced labour by the Myanmar military. Many were starving and unable to return to their villages for fear of being shot on sight.

25. Women from the Chin minority were harassed and sexually abused by Myanmar soldiers. The majority of the Chin people were Christians, and for a number of years, the Myanmar military had been forcing Christians to build Buddhist pagodas in their villages. Myanmar soldiers had been desecrating churches by turning them into army camps, disturbing religious ceremonies and preventing the preaching of the Gospel. Attempts were made to coerce the Chin people into converting to Buddhism by targeting Christians for forced labour and other abuses.

26. Myanmar was the new killing field of South-East Asia, and the international community was demonstrating the same lack of urgency and indifference it had shown towards the killing fields of Cambodia. Swift international action was needed, and the United Nations should implement economic sanctions against Myanmar. The military regime and its subordinates must be tried by an international tribunal for genocide and other crimes against humanity.

27. His organization called on the Sub-Commission to urge the United Nations High Commissioner for Human Rights to play a more active role in securing swift international action on behalf of Myanmar's minority peoples. It also requested the Sub-Commission to urge the Government of Thailand to accept Shan refugees and allow them to stay in refugee camps rather than forcibly repatriating them.

28. Mr. MAEDA (International Fellowship of Reconciliation) said that, although it was more than 50 years since Korea had been liberated from Japanese occupation, many of the Koreans living in Japan were still unable to enjoy their full human rights. In particular, their right to education was being violated: they were deprived of the right to learn their own culture and history and to cultivate their ethnic pride as Koreans.

29. None of the State-run universities permitted pupils from Korean high schools to take entrance examinations because of a discriminatory Government policy which required them first to take a correspondence course at a Japanese high school and then to take and pass a preliminary test in order to sit the entrance examination for the university in question. The Japanese Government should not discriminate against Korean students merely because they were taught in Korean at Korean schools. His organization requested the Sub-Commission to conduct a thorough investigation in Japan of the Government's discriminatory education policy towards Korean students.

30. Mr. BEERSMANS (International Movement for Fraternal Union among Races and Peoples) said his organization was very worried about the situation of minorities in Jammu and Kashmir. At the beginning of the 1990s, hundreds of thousands of Pandits had had to flee the Kashmir Valley because they were targets of religious cleansing; they were still living in inhuman conditions in camps. Recently a new dimension had been added, with foreign mercenaries launching a systematic campaign of annihilation of Hindus in which hundreds of innocent people had been killed.

31. The Hindus in Jammu and the Pandits in particular were acknowledged as being Kashmiris who belonged to Kashmir. His organization had been told repeatedly during a meeting with political leaders in the area that the killing of Hindus did not have the backing of the Kashmiris. All the political leaders condemned the action of the foreign mercenaries in the strongest terms, and were of the opinion that the Pandits should be allowed to return to their homes. Despite those condemnations, religious cleansing by the foreign mercenaries continued.

32. His organization urged the Sub-Commission and its inter-sessional Working Group on Minorities to use all its influence to stop the discrimination against minorities in Jammu and Kashmir. It also urged the Governments of India and Pakistan to start negotiations without delay so as to find a lasting solution to the Kashmir issue and restore peace to the area.

33. Ms. BOUVIER (Minority Rights Group) said that the situation in Kosovo had reached the stage of a major crisis with hundreds of thousands of displaced persons fleeing their villages. Early warnings had been ignored, and the Albanian civilian population was being driven out of the villages by the Yugoslav Federal Army in a scorched earth policy of combating the Kosovo Liberation Army.

34. Her organization thus recommended that the Sub-Commission, in partnership with the Commission on Human Rights, should consider how they could play a constructive role in acting on early warning signs of violent conflicts.

35. The role of the media in manipulating information to incite ethnic hatred and ethnic conflict had been well documented by the Special Rapporteur on freedom of opinion and expression. A number of constructive ideas and proposals had emerged during a seminar on the role of the media and minorities convened by her organization in May 1998 at the request of the Working Group on Minorities, but the Working Group had not planned its agenda carefully

enough to be able to discuss the issues involved. She thus commended the decision of the Working Group to restructure its agenda and rationalize its methods of work, and invited the Sub-Commission to undertake an in-depth discussion and review of the recommendations of the seminar (E/CN.4/Sub.2/1998/18, annex I).

36. The fourth session of the Working Group on Minorities, in May 1998, had produced some well-researched papers on various aspects of minority rights but, despite the encouragement of the Sub-Commission, it had not devoted sufficient time to considering the legal, political and economic legacies of the African slave trade and how they affected all communities of African descent in the Americas. The participation in the Working Group of persons representing those communities should also be encouraged.

37. Her organization was disappointed that there had been so little Government representation: the Working Group needed to find ways of attracting Governments to attend its meetings by discussing issues that were not discussed elsewhere. It was important that the members of the Working Group should hear the views of both the minorities and the Governments concerned.

38. She welcomed the Working Group's recommendation that minorities should put forward their questions in writing prior to sessions, and that agencies of the United Nations system should prepare their responses so as to foster a more in-depth debate.

39. It was essential that the forthcoming World Conference on Racism did not become an acrimonious forum of abuse, and that it should be a platform for a constructive programme to ensure that racial discrimination was effectively abolished and that all human beings were treated as equal in dignity and rights. The Sub-Commission should urge the High Commissioner for Human Rights to appoint a senior coordinator for the World Conference as soon as possible.

40. In short, therefore, her organization recommended that the Sub-Commission should take early action to open a dialogue with the Commission on Human Rights on action on situations such as that of Kosovo; accept the proposal of the Working Group to reorganize its agenda; consider the recommendations of the seminar on media and minorities; and adopt a resolution on the World Conference on Racism.

41. Mr. Weissbrodt, Vice-Chairman, took the Chair.

42. Ms. GIRMA (African Association of Education for Development) said that ethnic divisions and ethnic cleansing were unfortunately recurring in the continent of Africa. Ethnically organized fronts had come to power in Africa, encouraging the creation of ethnic armies which had rendered vulnerable certain sections of the civilian population. The time had come in both the Horn of Africa and the Great Lakes region to prevent dramatic situations developing that would lead to war and suffering. Both local and international actors had taken irresponsible decisions in the past, which were backed up by various kinds of dubious aid including armaments.

56. The ruling Bharatiya Janata Party (BJP) was committed to a policy of Hindu supremacy and to avenging Muslim rule in India prior to British colonization. It had organized the nationwide campaign in 1992 that had led to the demolition of the Ayodhya Mosque, allegedly because it had been built on the site of the birthplace of the Hindu deity Ram. Foundations for a temple dedicated to Ram had been laid. BJP had pinpointed 4,000 additional mosques in India that it wished to demolish for similar reasons.

57. His organization called on the Sub-Commission to urge the Government of India to reconsider its policy and to comply with its constitutional and international obligation to safeguard the interests of religious, ethnic and linguistic minorities.

58. Mr. THOMPSON (International Service for Human Rights) said that the media had often played an unconstructive and incendiary role by propagating racial and ethnic hatred. Consequently, his organization and the Minority Rights Group had recently organized, in collaboration with the Chairman of the Sub-Commission's Working Group on Minorities and the Office of the High Commissioner for Human Rights, an expert seminar on the role of the media in protecting minorities. The purpose of the seminar, which had been attended by over 30 journalists and representatives of minority and media rights groups, was to assist the Working Group by involving more experts in the discussion of minority access to the media and media action to represent minorities.

59. Other themes had included the need for greater diversity in the media, the training of minority journalists, censorship and the need for more effective self-regulation by the media to deal with racism and intolerance. The seminar's recommendations were contained in annex I to the Working Group's report (E/CN.4/Sub.2/1998/18). The participants had also proposed that minorities and minority-sensitive media should be included in the planning and publicizing of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in 2001.

60. His organization, which was disappointed that the Working Group had failed to discuss the conclusions and recommendations of the seminar at its recent session, urged it to give the seminar documents the serious consideration they deserved. It trusted that future NGO cooperation with Sub-Commission working groups would prove more constructive. While his organization remained committed to assisting the Office of the High Commissioner, the Sub-Commission and its working groups, that commitment was not at any price in terms of the limited financial and human resources available.

61. Ms. MANN (Liberation) said that most of the 650,000 Koreans in Japan were the descendants of persons who had been forcibly transferred there during the period of Japanese colonization of the Korean Peninsula. They were still suffering various human rights violations. No State-run university in Japan allowed graduates of Korean high schools to take their entrance examinations. The Japanese Government still refused to grant any form of recognition to the ethnic characteristics of the Korean minority. Her organization thus called upon the Sub-Commission to investigate the situation and urged the Japanese Government to revise its discriminatory education policy.

62. The Government of Bahrain discriminated against the minority of Persian origin who were commonly known as Bidun or stateless. They were denied Bahraini nationality and hence were unable to buy land, start a business or obtain government loans. They also faced social and economic obstacles, including difficulties in finding employment. Many had been deported by the Government and denied re-entry.

63. The Sub-Commission should urge the Government of Bahrain to regularize the status of the Bidun population by facilitating their access to citizenship and passports, to end the practice of deportation and to announce that Bahrainis living in exile were free to return to the country. In addition, the Commission's Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should look into the situation of Persian-origin minorities in Bahrain.

64. Mr. MALGUINOV (Observer for the Russian Federation) said that the Sub-Commission had a solid basis for its work on minorities, including, in particular, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the documents of regional organizations such as the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the Organization of African Unity (OAU). The Sub-Commission's Working Group on Minorities had an important role to play in identifying the most serious problems encountered by minority representatives in asserting their rights and by States in protecting the interests of minority population groups. He urged it to focus more closely on key issues and practical situations with a view to achieving tangible results. It was to be hoped that the Working Group's recommendations would be reflected in the Sub-Commission's resolutions and its recommendations to the Commission on Human Rights.

65. A detailed discussion of inter-ethnic relations and the practical implementation of minority rights in the Russian Federation had taken place in March 1998, when the Committee on the Elimination of Racial Discrimination had considered the country's periodic report.

66. His delegation viewed all manifestations of nationalism and chauvinism as unacceptable, particularly when they occurred in neighbouring States and affected the rights and dignity of individuals of Russian origin legally resident there. It had withdrawn its draft resolution on the issue of the Russian-speaking population of Latvia, at the last session of the Commission on Human Rights, in response to undertakings by Latvian politicians to improve the situation and promises by international figures to bring pressure to bear on the Latvian authorities.

67. However, although the Latvian Saeime (Parliament) had, on 22 June 1998, adopted amendments to the Citizenship Act under which children born in Latvia after August 1991 could be granted citizenship and the examination requirements for adult applicants for citizenship had been relaxed, the measures fell short of the recommendations of international experts, including those of the OSCE High Commissioner on National Minorities. For example, citizenship was not granted automatically to children and a whole series of conditions were attached. Moreover, parents were required to provide guarantees of their children's "loyalty" to the State.

68. Recommendations by the OSCE, the Council of Baltic Sea States and the Council of Europe regarding the prohibition of the use of minority languages in trade or social organizations and the right to instruction in the minority language had not yet been implemented. The draft labour law still enshrined inequalities and persons without citizenship were unable to enjoy minority rights. Decisions on those issues were to be made by referendum, in the run-up to which a new anti-Russian campaign had been launched. The non-citizens most closely concerned would not be entitled to participate in the referendum.

69. He trusted that the international community would not allow matters to follow the course envisaged by the nationalists. It was surprising, to say the least, that some delegations sought to justify the events unfolding in Latvia. Non-Latvians were not making any extraordinary demands; they simply wished to be able to live under normal conditions. The first step was for Latvia to implement the recommendations of the OSCE High Commissioner on National Minorities.

Statements equivalent to the right of reply

70. Ms. JANJUA (Observer for Pakistan) said that the Constitution guaranteed protection to all the citizens of Pakistan and the Prime Minister was committed to the promotion and protection of the rights of all minorities. In the face of many challenges, the Government was making every effort to establish a liberal, tolerant, moderate and progressive society. It was determined to thwart any attempt to spread ethnic or religious intolerance and was working hard to control the activities of armed groups. Unfortunately, the country continued to be the target of foreign-funded, indiscriminate terrorist acts, which would not be tolerated.

71. With regard to the so-called blasphemy laws, her Government categorically rejected the statement by one NGO that Section 295 of the Pakistan Penal Code was used as a weapon to control minorities. Many countries penalized blasphemy and, indeed, blasphemy laws were applied discriminatorily in some developed countries, which was not the case in Pakistan. Section 295 applied to Muslims and non-Muslims alike. The complaints against Section 295 emanated not from its existence but from its occasional misuse. The Government had instituted appropriate safeguards against such misuse and was also considering more stringent measures to penalize those making false accusations. The higher courts were on their guard against miscarriages of justice.

72. The whole country had been shocked by the suicide of Bishop John Joseph. Every effort was being made to resolve the case, which was currently sub judice. The Government and country had also been shocked at the incident in Shantinagar. The Prime Minister had assured non-Muslim minorities of full protection, immediate compensation and the speedy repair of damaged churches and homes.

73. A National Commission for Minorities had been set up to review laws or practices of the Government or government agencies reported to be discriminatory towards minorities, to recommend measures to ensure fuller participation by minority communities in all aspects of national life, to

examine the grievances of minority communities and to ensure that the places of worship of minority communities were preserved and maintained. Such aims corresponded with the basic tenets of Islam and of the Constitution of Pakistan.

74. Lastly, she hoped that self-styled NGOs which had spoken about Pakistan would, for credibility's sake, summon up the courage to speak of the human rights ills in their own country.

75. Mr. WELDEGIORGIS (Observer for Eritrea) said that the statistics for human rights violations in Ethiopia he had given the Sub-Commission two weeks previously needed updating: the number of persons expelled had risen from 13,000 to 17,000 and the number of those in arbitrary detention from 1,000 to 2,000. Also expelled had been 33 staff members of United Nations agencies and 4 OAU staff members. The Sub-Commission should speak out, having failed to do so during Colonel Mengistu's years in power, lest it acquiesce in the crimes of yet another barbarous regime.

76. Both the Government of the United States of America and Amnesty International had expressed deep concern at the forcible separation of families, the undue hardships of those detained or expelled to Eritrea and the financial losses caused by sudden expulsions. Amnesty International had further criticized the fact that the International Committee of the Red Cross (ICRC) had not been given full access to detainees. A letter from the ICRC itself, of 10 July 1998, gave the lie to the statement by the Ethiopian Ministry of Foreign Affairs that civilians taken to the border of Eritrea had been accompanied by representatives of the ICRC.

77. He had repeatedly urged members of the Sub-Commission and observers to go and see the situation for themselves. He was, however, convinced that enough verifiable third-party documentation existed for the Sub-Commission to take a firm stand. An appropriate pronouncement could avert a disaster.

78. Mr. MUSAYEV (Observer for Azerbaijan) said that, over many centuries, various minorities had lived in Azerbaijan in peace and harmony with Azerbaijanis, owing to the people's respect for universal human values and for the religious convictions of others. Despite the continued armed aggression by Armenia, resulting in the presence of about a million displaced persons, the Government guaranteed the protection of the human rights of all. Full effect was given to the right of minorities to establish their own national, cultural and spiritual centres, which received all possible material and financial assistance from the State. Minority languages were used in the publication of newspapers and books, in radio and television broadcasts and in teaching. Minorities were represented in parliament and all the State structures.

79. Minorities had duties as well as rights, however. They could not engage in any activity contrary to the purpose and principles of the United Nations, including the sovereign equality, territorial integrity and political independence of States. There was a tendency for the right of peoples to self-determination to be misinterpreted as a right of minorities to set up their own States. In extreme cases, one ethnic group could deprive other groups - and the population as a whole - of their fundamental rights or could even commit genocide.

80. The most blatant example of such a perverse interpretation was when the principle was used to cloak armed aggression against an independent State and to consolidate annexation of its territory. Armenia was propagating the theory that the basis of its conflict with Azerbaijan was the desire for self-determination of the Armenian community in the Nagorny Karabakh region which, before the conflict, had enjoyed the widest political, economic and cultural autonomy as part of Azerbaijan. It was clear, however, that the issue involved a gross violation of Article 2, paragraph 4, of the Charter of the United Nations.

81. It was illusory to think that the right to Statehood for minorities might promote peace and stability. The best defence against the threat of ethnic dislocation and tension was genuine democracy open to all. Some forms of self-rule would facilitate the effective implementation of minority rights in the fields of education, language, the media, culture and religion. In that connection, his Government considered the principles of settlement for the armed conflict between Armenia and Azerbaijan, as enunciated by the Chairman-in-Office at the 1996 OSCE Lisbon Summit, to be a valuable contribution to a universal peace model, based on respect for the territorial integrity of States and the promotion and protection of human rights.

82. Mr. ALEMU (Observer for Ethiopia) said that various groups had been independently documenting the criminal acts of the Eritrean Government. German-based researchers for soil and water conservation in Africa had reported the results of a field trip to eastern Tigray, just south of the border between Ethiopia and Eritrea. The Irob people who lived there were highly innovative and industrious farmers. In May 1998, their territory had been invaded by Eritrean forces. In the northern part of their land, women and girls had been raped, churches had been desecrated and were used to store Eritrean weapons, houses had been dismantled for firewood or building materials and, it was suspected, young Irob men were being forcibly conscripted into the Eritrean army.

83. The rainy season had been good, but farmers were not allowed to cultivate their fields unless they agreed to become Eritrean citizens. Able-bodied people had fled to Adigrat, whose population had more than doubled with the influx of 35,000 refugees. Among those were farmers, who prided themselves on their ability to work the land and for whom idleness was a sin. The Irob could not accept the continued occupation of part of their land and the division of their people; they regarded themselves as Ethiopians. If the international community could not convince Eritrea to withdraw its troops, then the Ethiopian people would have no choice but to recover their land by force of arms.

84. Those statements by neutral observers should make the Eritrean Government realize that it could not escape from its criminal acts against children and civilians by masquerading as a victim.

85. Mr. IDRIS (Observer for Sudan) said that Christian Solidarity International had alleged that the famine in northern Bahr-el-Gazal had been deliberately engineered by what it called the National Islamic Front, in pursuit of ethnic cleansing of the Dinka people. The NGO in question knew very well that the situation had been caused by the combination of an

unprecedented drought and the defection of a senior military officer, which had caused havoc and displacement among the civilian population. It had interpreted as a diversionary policy his Government's move to allow access to all areas in the south for the international community to deliver relief. It had also failed to mention that three million southerners, many of them Dinkas, had taken refuge in Government-controlled areas and in the north.

86. The NGO had gone on to allege Government involvement in raids carried out by tribes in May 1998, without mentioning that the raids were against the Sudan People's Liberation Army (SPLA), which had previously devastated those tribes in unprovoked raids, destroying 68 villages, murdering over 100 people and stealing tens of thousands of cattle.

87. The call by that NGO for his Government to cease hostilities and accept the Intergovernmental Authority on Development (IGAD) Declaration of Principles was misleading: it was the Government that had repeatedly called for a permanent cessation of hostilities, while the Garang faction of the SPLA had repeatedly rejected such a move. The NGO was well aware that the Government had unilaterally declared an indefinite and comprehensive ceasefire in the south, whereas the rebels had not, and that the Government had already accepted the IGAD Declaration of Principles as a basis for negotiations with the rebels.

88. His Government had invited those interested in human rights issues, including Amnesty International, various representatives of the United Nations and dignitaries from the States of the European Union, to visit the country. To demonstrate its keenness to achieve peace, it had unequivocally accepted the right of the people of southern Sudan to self-determination, to be exercised through an internationally supervised public referendum. The Khartoum Peace Agreement provided for the southern region to govern itself as a single entity; and the Constitution guaranteed freedom of expression, association and religion for all, including the minorities.

The meeting rose at 6.05 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Fiftieth session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 19 August 1998, at 10 a.m.

Chairman: Mr. GUISSE

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PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES
(continued)

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

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GE.98-13932 (E)

CONTENTS (continued)

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

(e) PRIVATIZATION OF PRISONS;

(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

The meeting was called to order at 10.05 a.m.

PREVENTION OF DISCRIMINATION AGAINST AND THE PROTECTION OF MINORITIES (agenda item 8) (continued) (E/CN.4/Sub.2/1998/18; E/CN.4/Sub.2/1998/NGO/3)

1. Mr. EIDE said that a number of constructive proposals had been made during the discussion on the report of the Working Group on Minorities (E/CN.4/Sub.2/1998/18). All members had expressed themselves in favour of continuing work on the Commentary to the Declaration and transmitting it to Governments and non-governmental organizations, and had encouraged the use of working papers.

2. With regard to the 1503 procedure, he explained in response to a comment by Mr. Yimer that the Working Group had no intention of becoming involved in those matters but had merely wished to inform the minorities present about other mechanisms to which they could have recourse such as the 1503 procedure or the treaty bodies.

3. Mr. Khalil and Mr. Maxim had drawn attention to the question of the relationship between the concepts of integration and of assimilation. The point was essential to all work on minorities and would be considered in greater depth.

4. The seminar on the role of the media had been a success. Regrettably, the Working Group had not been able to discuss the topic in greater detail. The working paper on the subject (E/CN.4/Sub.2/AC.5/1998/WP.3) would serve for the next session of the Working Group, at which the issue would be considered more closely and recommendations would be made.

5. In conclusion, he said that the right to self-determination should not be interpreted as the right to self-determination of an ethnic group as such. Within the United Nations framework, the right to self-determination meant the right to self-determination of peoples in general. To distort the concept by associating it with the idea of ethnic identity was to encourage the forming of clans which would use the self-determination principle to justify their desire for autonomy. The principle was a most important one and had greatly helped to transform the international system, but if wrongly interpreted, it could throw into doubt the very foundations of the Universal Declaration of Human Rights.

6. Mr. SORABJEE said that one of the main causes of violations of the rights of persons belonging to minorities was the persistence and perpetuation of negative stereotypes concerning some ethnic or religious groups, which were transmitted to young people by parents, teachers and the media. It was therefore essential to promote tolerance from an early age, observing the principle set forth in article 5.3 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which provided that a child "shall be brought up in a spirit of understanding, tolerance, ... respect for freedom of religion or belief of others ...".

7. The media had an important role to play in the protection of minority rights. They had a duty to refrain in all circumstances from disseminating ideas based on racial superiority, racial hatred and incitement to violence

against particular racial groups. It was also their responsibility to promote tolerance and multiculturalism by adopting codes of conduct and establishing independent monitoring and complaint mechanisms. At the same time, freedom of expression needed to be preserved and care had to be taken that, on the pretext of protecting minorities, Governments did not ban dissident or critical views which they found unpalatable.

8. The most serious violations of minority rights often occurred in the religious sphere. According to article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, persons belonging to minorities had the right "to profess and practise their own religion". As regards the extent of that right, he noted that in India, religious freedom as guaranteed by the Constitution included the right to propagate one's religion as well as freedom of conversion to other religions by lawful means. Laws adopted in certain countries which prohibited religious conversion were an instance of intolerance and should be rescinded in accordance with article 4 of the Declaration on the Elimination of All Forms of Intolerance, which required States to enact or rescind legislation where necessary to prohibit any discrimination on grounds of religion or belief. The best way of protecting minorities was to create a climate of tolerance and to foster a culture of tolerance and mutual understanding.

Statements in exercise of the right of reply

9. Mr. WELDEGIORGIS (Observer for Eritrea) said that by repeating its baseless allegations again and again, the Ethiopian Government was seeking to transform pure falsehoods into facts. For example, the air attack on Mekelle airbase on 5 June had been carried out in response to an Ethiopian air attack on Asmara International Airport. The claim that Ethiopia's attack had been retaliatory was untrue, as many diplomats and journalists had acknowledged. The Eritrean attack had not been premeditated, as was claimed, and the resulting civilian deaths had not been caused intentionally. Indeed, the President of Eritrea had expressed his apologies to the families of the victims. The statement attributed to him was a fabrication. The Ethiopian Government's accusation that 72 Ethiopian citizens living in Eritrea had been arbitrarily detained by the Eritrean Government was also false. His Government had already informed the International Committee of the Red Cross (ICRC) that no Ethiopian citizen was being detained arbitrarily in Eritrea and that, of the alleged 72 Ethiopian detainees, only 12 still remained in police custody pending the completion of investigations, 6 had been duly tried and sentenced and were serving their respective terms, 32 had been released long since, and 22 had never been detained at all. In support of its assertions, the Eritrean delegation had submitted documents whose authenticity could be checked, since they emanated from the United States Government, Amnesty International, United Nations agencies and ICRC. In contrast, the Ethiopian delegation had quoted only one document, whose credibility was questionable to say the least.

10. As proof of its good faith, and because it believed that to be the best way of verifying the truth, Eritrea had invited the Sub-Commission to send a delegation to conduct on-site investigations of the human rights situation in both Eritrea and Ethiopia.

11. Mr. BAUMANIS (Observer for Latvia) expressed regret at the fact that the observer for the Russian Federation had on the previous day again raised the question of non-citizenship although everyone considered the matter to be settled, the amendments to the citizenship law made by the Latvian Parliament having been received with satisfaction by the Organization for Security and Cooperation in Europe (OSCE), the European Union, the United States of America and many other institutions and international organizations. Only Russian officials appeared to adopt a different interpretation.

12. Mr. NAZARIAN (Observer for Armenia), replying to the statement by the observer for Azerbaijan, said that Armenia was not in conflict with any of its neighbouring countries and that there had never been an Armenian aggression against Azerbaijan. The only conflict that existed involved the claim of the Armenians of Nagorno-Karabakh to their right of self-determination.

13. When the observer for Azerbaijan claimed that minorities living in Azerbaijan could freely exercise their political, cultural and religious rights, she was apparently forgetting the mass killings, massacres, expulsions and other abuses of which the Armenians had been the victims in several Azerbaijani cities, especially Sumgait, and which clearly proved that her Government did not guarantee the exercise of the rights of the population of Nagorno-Karabakh. To present the Nagorno-Karabakh issue as a problem of minorities was incorrect, since Armenians formed a majority in the region. The truth of the matter was that they had suffered alien domination and had been deprived of their political, social and cultural rights for centuries.

14. Mr. ALEMU (Observer for Ethiopia), replying to the statement by the observer for Eritrea, reiterated that his Government fully respected the rights of Eritrean nationals living peacefully in Ethiopia, and had proved that position in practice.

15. As explained earlier, legitimate measures had been taken against a limited number of Eritrean nationals, not because of their origin but because the individuals in question posed a threat to the safety of Ethiopians and the security of the country as a whole by their membership of a clandestine terrorist organization whose object was to advance Eritrea's policy of aggression against Ethiopia. The measures taken were thus fully in accordance with international law. The Eritrean Government's defamatory and racist allegations were plainly intended to abuse his own Government's policy of transparency. The reality, however, was that Ethiopia was a country open to all while Eritrea was a closed country in which no international agency could directly ascertain the situation of Ethiopian residents.

16. Moreover, the Eritrean Government, not content with committing gross and systematic violations of the human rights of Ethiopians, had also, in the Eritrean ports of Massawa and Assab, illegally seized goods intended for relief and civilian projects.

17. The Eritrean Government was manipulating the facts in order to divert attention from its criminal acts. It was misrepresenting the results of the investigation carried out by the Fact-Finding Committee of Ambassadors of the Organization of African Unity (OAU). That Committee had established that

Ethiopia had administered the town of Badma before 12 May 1998 and that, consequently, Eritrea had been the aggressor in that incident. In conclusion, he said that the Eritrean attack on Mekelle had been premeditated and that schools had been targeted deliberately.

18. Ms. EIVAZOVA (Observer for Azerbaijan), replying to the observer for Armenia, said that the adoption of four resolutions by the Security Council on the armed conflict between Armenia and Azerbaijan, the preparation of three documents by the Commission on Human Rights and various texts adopted by OSCE in Budapest and Lisbon as well as by many other organizations confirmed that Armenia had attacked Azerbaijan and proved that an aggression had indeed taken place.

19. As for the events at Sumgait, courts of law had recognized and civilian witnesses had confirmed that the Armenians themselves had organized the pogroms in order to justify the aggression against Azerbaijan. The picture presented by the observer for Armenia was a falsification of the true facts.

20. Mr. WELDEGIORGIS (Observer for Eritrea) said that the Ethiopian Government was trying to cover up the crimes, atrocities and violations of human rights and fundamental freedoms perpetrated against Eritreans and Ethiopians of Eritrean origin. So far as the air attack was concerned, he possessed graphic evidence showing that the Ethiopian air force had attacked Asmara by surprise and had returned several minutes later. The Eritrean air force had intervened only after that. Other attacks had taken place on the following day. Those attacks could not be denied, and the Ethiopian Prime Minister himself, unless he was lying, had admitted issuing the order to carry out a preventive attack.

21. The reason why the Ethiopian Government had so far failed to invite observers from the Sub-Commission or other bodies to visit the country in order to conduct an on-site investigation was that it was afraid of the truth being revealed. In reality, the Ethiopian Government and all Ethiopian representatives were using every possible means to conceal their odious crimes against Eritreans.

22. Mr. NAZARIAN (Observer for Armenia), replying to the observer for Azerbaijan, said that no reference to an aggression by Armenia was to be found anywhere in the Security Council resolutions. Quite the contrary, it was Azerbaijan that had, for the reasons described, launched a major offensive against the civilian population of Nagorno-Karabakh. Neither did the resolutions speak of a withdrawal of Armenian forces from Nagorno-Karabakh, for the simple reason that there had never been any Armenian forces in the region.

23. Lastly, no decision on Nagorno-Karabakh had been adopted at the Lisbon Summit of OSCE. There had only been a declaration by the Acting Chairman, which had in fact caused an upset in the negotiations.

24. Such distortions of the truth impeded the work of international bodies such as the Sub-Commission and delayed the adoption of constructive measures to remedy the plight of the people of Nagorno-Karabakh.

25. Mr. ALEMU (Observer for Ethiopia) said that 258 Ethiopian residents of Assab had left Eritrea for Djibouti under inhuman conditions after being obliged to pay exorbitant amounts for the sea-voyage. Interviewed by international news media, they had expressed concern about Ethiopian nationals forced to stay in Eritrea notwithstanding their expressed wish to return to their country because they had no money to pay for visas, transport and clearance by various government institutions. A total of 6,000 Ethiopians had left Eritrea to date.

26. In conclusion, he said that, however hard it tried, the Eritrean Government could never conceal its crimes. He emphasized once again that there was no air base at Mekelle and that the attack on that town had been premeditated and deliberately targeted against schools.

27. Ms. EIVAZOVA (Observer for Azerbaijan) said that it was Armenia that had attacked her country and occupied some 20 per cent of its territory, causing, inter alia, population displacements. How could Armenia accuse Azerbaijan of having attacked Nagorno-Karabakh when that region formed part of Azerbaijan's territory? After a brief review of the historical circumstances as a result of which Armenians had come to form some 80 per cent of the population of Nagorno-Karabakh, she said that the fact of being present in a region in large numbers did not confer the right to own that region. Azerbaijan continued to be firmly opposed to the reunification of Armenia and Nagorno-Karabakh.

28. The CHAIRPERSON announced that the Sub-Commission had completed its consideration of agenda item 8.

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF DETAINED JUVENILES;

(c) GROSS AND MASSIVE VIOLATIONS OF HUMAN RIGHTS AS AN INTERNATIONAL CRIME;

(d) JUVENILE JUSTICE;

(e) PRIVATIZATION OF PRISONS;

(f) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(agenda item 9) (E/CN.4/Sub.2/1998/19; E/C.4/Sub.2/NGO/2; E/CN.4/Sub.2/1997/29)

29. Mr. JOINET, introducing the report of the sessional working group on the administration of justice (E/CN.4/Sub.2/1998/19), said that its session had attracted a record participation. The working group had shortened its agenda and had taken due account of the recommendation of the Commission on Human Rights concerning duplication of work. The session had been characterized by transparency and a spirit of dialogue. The first and most important item on

the agenda had been devoted to the preliminary draft international convention for the protection of all persons against forced disappearance. The second item concerned issues relating to the deprivation of the right to life. In that connection, the working group had considered the follow-up report by Mr. Guissé on the de jure and de facto abolition of the death penalty throughout the world. The data contained in the report showed that no development had taken place since the previous year. The working group had invited Mr. Guissé to submit at its next session an updated follow-up report taking into account the approach specified in Commission on Human Rights resolution 1998/8 and containing a list of measures taken by various United Nations bodies and an analysis of progress in the signing or ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

30. The third agenda item dealt with habeas corpus. The working group had abandoned the idea of drafting a third optional protocol to the Covenant, the Human Rights Committee having taken the view that the undertaking was too complex. The Committee had, however, agreed at the working group's request to review its general comment on article 4 of the Covenant and to reaffirm that habeas corpus was a non-derogable right.

31. The fourth agenda item concerned measures to be taken to give full effect to the Genocide Convention of 1948. The adoption of the statute for the International Criminal Court which had taken place since the inclusion of the item in the agenda, had made good one of the matters left outstanding under the 1948 Convention (which provided, precisely, for the establishment of a criminal court). The working group had accordingly decided to amend the title of agenda item 4 to read "Action to combat genocide: from the 1948 Convention to the International Criminal Court, review and prospects", pending a possible decision at the next session to drop the item altogether.

32. Item 5 (Juvenile justice) had been taken off the agenda. The working group had requested the secretariat, in the interest of avoiding duplication of work, to prepare a document listing other initiatives taken in that sphere. With regard to agenda item 6 (Privatization of prisons), which had been on the agenda since 1989, the working group had held a long discussion on the subject of Commission on Human Rights resolution 1998/32 requesting the Sub-Commission to reconsider the item and decide whether to abandon the idea of appointing a special rapporteur and/or of undertaking a special study. The working group had eventually decided that it would dispense with the appointment of a special rapporteur, but had requested Mr. Alfonso Martínez to prepare for the next session a brief update on measures taken by countries in connection with privatization of prisons. It had also decided to draw treaty bodies' attention to the need for a clearer distinction to be drawn between the physical conditions for prisoners, which were linked with each country's level of development, and ill-treatment of prisoners, which was unrelated to the level of development.

33. Agenda item 7 (Gross and massive violations of human rights as an international crime) had finally been removed from the agenda in view of the desultory attitude of the Commission on Human Rights, which showed that there was still progress to be made in the matter of duplication of work.

34. Reverting to agenda item 1, namely, the preliminary draft international convention on forced disappearances, he said that, while the drafting process had not been facilitated by the appointment of new members to the working group, a consensus had finally emerged on all the draft articles. The first part (substance) had already been adopted in 1996, but it had been re-examined article by article in order to enable the new members to contribute their views. The second part (follow-up mechanism) had been drafted. The document had been issued in the three working languages, and the working group's report included a summary record of the debate in its paragraphs 17 to 63.

35. Several articles on which there might not have been unanimity had finally been adopted by consensus. Thus, the working group had decided to refer in article 1 to forced disappearances perpetrated by non-government groups, an increasingly widespread phenomenon which the International Law Commission was starting to concern itself with. In article 3, it had agreed that the systematic or massive practice of forced disappearance constituted a crime against humanity, and was therefore exempt from statutory limitation. In all other cases, the offence was subject to statutory limitation starting from the moment when the fate or whereabouts of the disappeared person was established with certainty, and States were required to undertake to adopt the longest period of limitation laid down in their national criminal law.

36. In connection with article 25, many NGOs had suggested that the Secretary-General's role in respect of the functioning of the monitoring mechanism (Committee against Forced Disappearance) should now pass to the High Commissioner for Human Rights. The working group had taken the view that the idea, though good in itself, was slightly premature, in that it raised the question of coordination between the mandate of the Secretary-General, who was the depositary of the instrument, and that of the High Commissioner. It had therefore been decided to maintain the original wording. Lastly, the most difficult issue had been that of reservations, dealt with in article 36. The problem had been to decide whether there should be automatic recognition of admissibility of claims. Opinions had been divided, but a compromise solution had been reached to the effect that, if a State acceded to the Convention without making reservations, claims in respect of that State would be automatically admissible. A State that did not wish claims brought against it to be automatically admissible would have to lodge a reservation. In dealing with the issue, the working group had decided to reproduce the wording of article 20 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination.

37. He hoped that the work done by the working group would enable the Sub-Commission to adopt a decision or a resolution transmitting the revised draft convention, which the working group had adopted by consensus, to the Commission on Human Rights. In conclusion, he expressed appreciation for the cooperation and assistance of the secretariat, the NGOs (which had facilitated the work of the group by appointing a single individual to represent them), and the special representatives and chairpersons of the various working groups who had contributed to the work. He also paid a tribute to the memory of all victims of forced disappearance.

38. Mr. ARTUCIO (International Commission of Jurists), speaking on behalf of the NGOs he had represented at the session of the working group on the

administration of justice, thanked the members of the working group and, in particular, its Chairman-Rapporteur for the spirit of dialogue shown and for the opportunity given to NGOs to take part in the preparation of the draft convention. The text adopted by the working group was a good one and would contribute to the struggle against the phenomenon of forced disappearance. It was to be hoped that the Sub-Committee would approve it and transmit it to the Commission on Human Rights, whence it would proceed to the General Assembly and eventually become the universal convention everyone was waiting for.

39. Mrs. WARZAZI thanked Mr. Joinet for the excellent work done on the draft convention. She hoped that special emphasis would be placed, as agreed, on disappearances perpetrated by non-government groups, and thought that the article adopted on the subject of reservations was entirely appropriate. She hoped that the text of the draft would be adopted by the Sub-Commission without delay and transmitted together with the record of the working group's work to the Commission on Human Rights.

40. Mr. ZHONG Shukong said that the Sub-Commission should request the Commission to invite States Members of the United Nations as well as intergovernmental and non-governmental organizations to make comments on the draft convention.

41. Mr. JOINET, supported by Mrs. WARZAZI and Mr. WEISSBRODT, proposed that the Sub-Commission should decide by consensus to transmit to the Commission the draft convention together with the summary records of all debates concerning the amendments thereto and to request the Commission to transmit the draft to Governments, NGOs and intergovernmental organizations for their consideration and comments.

42. The CHAIRMAN said that he took it that the Sub-Commission accepted that proposal.

43. It was so decided.

44. Mr. DJONBALIC (Transnational Radical Party) said that in Tunisia the judiciary was totally dependent on the political power, but, paradoxically, the system was at the same time very formalistic in order to give the impression that Tunisian justice was independent and fair. The main feature of the system of administration of justice in Tunisia was that all judiciary procedures had a political character and the rights of the defence were systematically violated, as evidenced by the actions brought against Moncef Marzouki, the former President of the Tunisian Human Rights Association, Mohamed Moadda and Khenais Chemmeri, President and Vice-President of the Social Democratic Movement, or the lawyer Radhia Nasraoui. The most typical case was that of Khemais Ksilla, Vice-President of the Tunisian League for Human Rights, who had been sentenced to three years in prison simply for explaining in public that he had gone on hunger strike in 1997 in protest against the withdrawal of his passport on the ground of his human rights activities.

45. Another noteworthy element was article 307 bis of the new Code of Criminal Procedure, in force since 1993, which allowed all Tunisians to be

investigated for political activities in foreign countries which were considered lawful in those countries but criminal in Tunisia. Moreover, the lack of independence of the judiciary meant that State agents accused of committing acts of torture in the exercise of their duties enjoyed complete immunity, as did the government-controlled press, which failed to react when citizens were attacked in press campaigns. The Transnational Radical Party therefore invited the Sub-Commission to take all necessary steps to promote the rule of law in Tunisia.

46. The administration of justice also left a great deal to be desired in the Federal Republic of Yugoslavia, where arbitrary arrests were frequent and torture was commonly practised, especially in the case of Albanian detainees. In that connection he referred to the case of Mr. Rexhep Bislimi, an activist of the Council for the Defence of Human Rights and Freedoms, who had been arbitrarily arrested on 6 July and had died on 22 July as a result of ill-treatment in custody. Detentions, disappearances and ill-treatment of medical and humanitarian personnel in Kosovo had int nsified since January 1998. Thus, Mr. Hafir Shala, a member of the Mother Teresa Association, had disappeared since his arrest several months earlier, and Mr. Destan Rukiqi, who had been courageous enough to report human rights abuses in Kosovo and especially in the region of Drenica, was currently in a serious condition in hospital after being subjected to ill-treatment. Despite promises given by Mr. Milosevic to representatives of the European Union and other international bodies, a recurrence of the same scenario as in Bosnia, where international human rights observers had been denied access to combat areas for the purpose of conducting investigations, was to be feared in Kosovo. The Transnational Radical Party therefore urged the Sub-Commission to encourage the Commission's Special Rapporteur on the Former Yugoslavia to consider the matter within the framework of his activities.

47. Mr. LITTMAN (Christian Solidarity International) called upon the Sub-Commission to speak out without delay against the genocide being committed by the Sudanese Government upon a part of the Sudanese population. Only the previous day, the Sudanese Government had blocked the delivery of humanitarian aid by air to the regions affected by famine. If nothing was done, little short of a million people were in danger of starving to death within the coming weeks. The Sub-Commission's intervention could perhaps take the form of a statement by the Chairman similar to the one issued on Kosovo.

48. Ms. MOYA (American Association of Jurists) (AAJ) expressed regret that, unlike the Inter-American Convention on Forced Disappearance of Persons and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the working group's draft convention on forced disappearances did not provide for the possibility that the perpetrator of forced disappearances might be tried in absentia in the State of which the victims were nationals. The lack of any such provision meant, for example, that proceedings such as those being brought at present in Spain or Italy against members of the Argentine and Chilean armed forces would not be possible. Her Association believed that it would be useful if a provision to that effect, modelled on article IV (c) of the Inter-American Convention and article 5, paragraph 1 (c), of the Convention Against Torture, were included in the draft.

49. In its resolution 1997/20, the Sub-Commission had recommended to the Commission to consider the possibility of appointing a special rapporteur on the impunity of perpetrators of violations of economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights had also proposed the appointment of a special rapporteur on violations of those rights. The Commission on Human Rights having taken no action on that request, the AAJ proposed that the Sub-Commission should reiterate it. Such an initiative was especially called for as transnational corporations were seriously infringing fundamental human rights in the economic and financial areas.

50. Ms. SARAMAD (International Association of Democratic Lawyers) (IADL) said that the human rights situation in Iran was steadily deteriorating. More than 250 people had been executed in public during the past year. Four men had been hanged on 17 June 1998 for having "insulted His Eminence the Imam and the Supreme Guide of the Revolution". According to the annual report of Amnesty International, cruel and inhuman punishments such as whipping and stoning continued to be imposed and tortures continued to be practised. Mohammad Hossein Ziai Far, a judicial authority, had recognized that torture was used to extract confessions, that secret detention centres existed and that many people were without news of members of their families abducted by State agents.

51. Women continued to suffer discrimination in the sphere of employment. There was a de facto ban on their exercising certain professions. New steps towards the legalization of sex discrimination were in preparation. The Parliament of the Mollahs had recently adopted a law forbidding the media to publish articles or documents which were likely to create a conflict between the sexes on the pretext of defending women's rights and in contradiction with religious values. Some women had been arrested and manhandled for being inadequately veiled.

52. The press continued to be gagged and no opposition meetings had been authorized since Mr. Khatami had become President. Mr. Khatami, incidentally, had declared that only those who followed Islam and the Supreme Guide could engage in political activities.

53. In conclusion, she said that IADL appealed to the international community to call upon the Iranian Government to respect universal human rights principles.

54. Mr. ARTUCIO (International Commission of Jurists) (ICJ) said that in Peru the executive had adopted a series of measures which seriously infringed the Basic Principles on the Independence of the Judiciary adopted by the General Assembly in 1985. For example, in May 1997 three constitutional court judges had been removed from office for saying that the law authorizing President Fujimori to run for a third term was contrary to the Constitution. In May 1998 the executive had approved a decree having force of law which empowered military courts to try a number of offences which normally fell under the jurisdiction of ordinary courts. For example, cases of murder, kidnapping and theft committed by organized groups of criminals would be classified as "aggravated terrorism" if the perpetrators used military weapons or wore soldiers' or policemen's uniforms, and would for that reason be

brought before military courts. The reasons why it was undesirable that military tribunals should have power to try civilians or military personnel who had committed offences under ordinary law were known to everyone and were stated, in particular, in a report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20, para. 408) and in the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/Sub.2/1996/18). ICJ therefore requested the Sub-Commission to call upon the Peruvian Government to rescind the Decree-Law of May 1998.

55. With respect to Tunisia, ICJ requested the Sub-Commission to call upon the Tunisian authorities to release Mr. Khemaïs Ksilla, Vice-Chairman of the Tunisian League for the Defence of Human Rights, and to take steps to guarantee the independence of the judicial system and the safety of human rights activists.

56. Mr. OZDEN (Europe-Third World Centre) (CETIM) said that in November 1997 the Istanbul Bar had published a report from which it emerged that detention conditions in Turkish prisons were deplorable. Despite official action by the authorities to combat the practice of torture, nothing had in fact changed. For example, while the duration of police custody had been reduced, arrests were being made by police officers who either did not record the arrested person's name and the date of the arrest or recorded a later date. Furthermore, the right to have access to a lawyer while in police custody, although provided for in the Code of Criminal Procedure, was widely ignored. Torturers were rarely prosecuted, and, when they were, the sentences imposed were absurd. For example, the chief of police Cemalettin Turan had been sentenced only to a fine for having tortured Ms. Yelda Özcan, a member of the Turkish Human Rights Association. The state of siege in force in several Kurdish provinces since 1978 and the state of emergency proclaimed in 1987 were a source of gross and massive violations of human rights.

57. In a recent decision (Incal v. Turkey case), the European Court of Human Rights had declared that the State security courts (DGM) lacked independence and impartiality. They were, in fact, emergency tribunals, which sentenced hundreds of thousands of persons a year for offences of opinion and expression.

58. Lastly, CETIM was profoundly concerned by the infiltration of the State apparatus by the mafia, a problem whose existence was recognized by the Government itself.

59. Mr. GARCIA PICOLA (Pax Romana) said that in Peru the Government, acting in violation of the principle of separation of powers, had adopted a number of decrees having force of law under the pretext of combating a dramatic rise in urban crime. Under those decrees, many offences previously dealt with by ordinary courts were now being tried by military courts on the ground that they constituted acts of "aggravated terrorism". The national police were completely free to decide whether an offence should be classified as a case of aggravated terrorism and could then arrest a person without a judge's warrant even if he were not caught in flagrante delicto. The police could also detain people for 15 days without bringing them before the military judge and could keep them in solitary confinement for 10 days.

60. The freedom of action of examining magistrates had been considerably reduced. The policemen conducting the preliminary inquiry could not be called as witnesses and their report had probative value. Thus, the earlier situation of "faceless justice" had been succeeded by one of "faceless investigation".

61. Restrictions had been placed on the rights of the defence. Judges could not be challenged, and officially appointed lawyers were sometimes appointed by the police themselves. Lastly, more and more severe sentences were being imposed. The country had thus become a real police State.

62. Pax Romana supported the draft convention on forced disappearances. In that connection, it should be noted that in Mexico several persons, including Salvador Mejía Calderón, Pedro Romero Macedo and Vicente Delgado Mota, had been arrested during the past month, a fact which shed significant light upon the situation in a country where massacres had been perpetrated, as for instance at Acteal.

63. In conclusion, Pax Romana called upon the Sub-Commission to condemn the growing number of human rights violations committed in Peru and Mexico.

64. Mr. MOKBIL (War Resisters International) said that the situation in Yemen was a typical example of the link between the application of emergency provisions and human rights violations, which had become more and more common in that country. All the abuses referred to in the report on the question, in particular corruption of the judiciary and its subordination to the executive, suppression of the freedom of opinion and expression, terrorism, kidnapping, murder, arbitrary arrests, torture and other forms of discriminatory, inhuman and degrading treatment were regularly practised in Yemen. As an example, he referred to events which had occurred during the previous three months, in particular the violent suppression of peaceful demonstrations in several regions in the course of which many persons had been killed, wounded or arrested, air bombardment of civilian homes, and the murder in July 1998 of three nuns belonging to the Mother Teresa Association, who had come to Yemen in order to offer humanitarian assistance.

65. War Resistance International therefore appealed to the Sub-Commission to adopt a resolution urging the Yemeni Government to put an end to human rights violations and the practice of torture in Yemen and to release detainees.

66. Ms. MENEGAKIS (International Educational Development) expressed concern at police harassment and violence against members of the royal family of Hawaii accused of alleged offences arising from their attempts to restore the Kingdom of Hawaii. In particular, she referred to the arbitrary arrest of Queen Akahi Wahine for alleged assault, although it was the Queen herself who had been the victim of an abduction attempt.

67. Her organization further requested the Sub-Commission to join 160 members of the United States Congress in demanding the release of Leyla Zana, a Kurdish deputy, and other Kurdish members of Turkey's National Assembly imprisoned for their political beliefs and to urge the Turkish Government to release the writer Ismail Beskci, jailed for many years for his writings.

68. In Indonesia, many persons had been arrested and imprisoned following the general movement of unrest after long years of oppression in that country. The Sub-Commission should, in particular, demand that the Indonesian authorities should pay due compensation to six persons jailed in the Moluccas in February 1998 for claiming the right of Moluccans to self-determination, as well as to Indonesians of Chinese origin subjected to numerous violations during the crisis of May 1998.

69. Her organization was also deeply concerned by the continued imprisonment of prisoners of war of both parties to the conflict in Western Sahara. It particularly drew the Sub-Commission's attention to the situation of Mohammad Dadach, detained since 1976. It would be recalled that the ceasefire agreement of 6 September 1991 provided for the immediate release of all political prisoners and prisoners of war.

70. Lastly, it appealed to the Sub-Commission to intercede as a matter of urgency with the United States Government for the release of Leonard Peltier, one of the greatest Indian leaders of the age, who had been in prison for 22 years and whose health had suffered serious deterioration owing to the prison authorities' refusal to allow him the necessary medical treatment. Lastly, she urged the Sub-Commission to call on all relevant authorities to obtain the earliest possible release of Vincent Cochetel, a UNHCR representative held hostage in North Ossetia for the past 200 days.

71. Mr. PANDITA (Interfaith International), speaking on agenda item 9 (c), said that he shared the view expressed by Mr. Chernichenko in his report (E/CN.4/Sub.2/1997/29) that crimes such as slavery, genocide or ethnic cleansing should be classified as international crimes and, by extension, as "crimes against the peace and security of mankind". Mr. Chernichenko rightly pointed out that serious human rights violations, including international crimes, were often perpetrated by non-government entities, terrorist groups, etc., but regrettably did not undertake an in-depth analysis of the problem and, in particular, did not discuss the system of operation of such groups. Yet it was clear that they often acted with the support and the material and logistical assistance of certain States, notwithstanding those States' protestations of non-involvement. In some cases, organizations which invoked religion to justify their actions were merely a tool in the hands of certain Governments.

72. That situation, highly dangerous as it was to peace and security in any given region, prevailed in many parts of the world, and in particular in Central and South Asia, where human rights violations were the direct result of genocide and ethno-religious cleansing of targeted groups and communities. Thus, hundreds of thousands of inhabitants of Tajikistan had been forced to go into exile following terrorist acts committed by groups based in the north of the neighbouring country of Afghanistan. Likewise, in the Indian State of Jammu and Kashmir, the 300,000 persons composing the small religious minority of the Pandits of Kashmir had been driven from the region by externally sponsored terrorist groups of fundamentalists which wanted to eliminate them.

73. The time had come for the perpetrators of those crimes together with their patrons to account for their acts before the international community. A mechanism to strengthen the mandate of relevant agencies such as the International Law Commission needed to be evolved to that end.

74. Mr. CHOEPHEL (Society for Threatened Peoples) said that certain States made a show of becoming parties to certain international human rights instruments, but did nothing to ensure the implementation of their own national laws to safeguard the human rights of detainees. Thus, since the ratification by China of the United Nations Convention against Torture, 55 Tibetan political prisoners had died as a result of torture. More than 1,200 political prisoners remained incarcerated in Tibet for the non-violent expression of their political views and were denied all their rights, including the right to legal assistance, family visits and medical care. During the past two years more than 450 Tibetans had been detained and sentenced to long terms of imprisonment for "endangering State security" or "leaking State secrets", and many of them were being routinely tortured in prison.

75. As an example, he referred to the case of Ngawang Sangdrol, a young nun first arrested at the age of 10 and several times thereafter, who had been sentenced to a total of 18 years in prison. She was at present beirg held in solitary confinement at Drapchi Prison as a punishment for her involvement in a prison protest in May 1998 and was believed to have been tortured. Tanak Jigme Sangpo, a teacher arrested in 1964 on a charge of "counter-revolutionary propaganda", was currently serving a sentence of 28 years, his sentence having been increased by 8 years for protesting against the situation in Tibet and against his prison conditions on the occasion of a Swiss delegation's visit to Drapchi Prison in December 1991. The best known case, of course, was that of Gedhun Choekyi Nyima, the nine-year-old boy regarded as the second-highest spiritual leader of the Tibetan people, who had been held incommunicado for three years by the Chinese authorities.

76. It was regrettable that China, after taking a first step in the right direction by inviting foreign delegations, including the Working Group on Arbitrary Detention, to visit Tibet, had failed to modify its practices. In particular, his organization appealed through the Sub-Commission to the Working Group on Arbitrary Detention to intervene without delay in order to safeguard the well-being of three Tibetan prisoners who had suffered reprisals in the form of ill-treatment, solitary confinement and extension of their sentences for protesting about their conditions of detention to the Working Group.

77. In another incident, 11 identified Tibetan prisoners had been shot or tortured to death at Drapchi Prison following two protests at the prison in May 1998. The incident demonstrated that the Chinese authorities relied exclusively on violent methods to deal with prisoners and had no regard for international instruments designed to protect their human rights. In the eyes of the Chinese authorities, political prisoners were criminals deserving only of death. His organization appealed to the Sub-Commission to express its concern at the death of 11 young Tibetan prisoners whose only crime had been to protest against inhuman detention conditions.

78. Mr. REHMAN (International Institute of Peace), speaking on agenda item 9 (a), said that states of emergency were almost always declared because of the insecurity of the rulers of the country concerned. Thus, an emergency had been declared in Pakistan directly after that country had conducted nuclear tests in May 1998. The object of the emergency had clearly been to

stifle protest. Pakistan's rulers knew that the people, well aware of their country's precarious economic situation, would not accept the idea that extremely scarce resources which ought to have been used for economic and social development should be diverted to the making of the most destructive weapon of war.

79. Furthermore, states of emergency inevitably resulted in gross violations of human rights, since all rights and freedoms, especially the freedoms of expression and association, were suspended. If those were the characteristics of a state of emergency, the people of a part of Jammu and Kashmir militarily occupied by Pakistan could be said to have lived under a state of emergency for 50 years. The region had no media of its own, political activity was prohibited and freedom of expression was non-existent. In most countries, an emergency was declared for a short period of time and freedoms were restored once the emergency had been lifted. People in Jammu and Kashmir were born and died under a state of emergency.

80. Mr. BHAN (Himalayan Research and Cultural Foundation), speaking on agenda item 9 (c), said that from the point of view of international law, gross and massive violations of human rights in any form had to be regarded as crimes against humanity that were not subject to statutory limitation, and that their perpetrators had to be prosecuted and punished by the authorities of the State in whose territory their crimes had been committed and in which they had been apprehended.

81. Terrorism was a new form of crime against humanity which caused grave concern to the General Assembly and the Commission on Human Rights. A number of mechanisms and bodies had been set up to study all aspects of the phenomenon and the means of combating it and to suggest measures to be taken to punish the perpetrators. It had to be recognized, however, that acts of terrorism continued to be perpetrated in various parts of the world, and in particular in Jammu and Kashmir, where terrorist groups sponsored by Pakistan were continuing to kill innocent people and to engage in massive human rights violations. The main targets of those groups were Kashmiri Pandits and Hindus. Pakistan, pursuing its objective of subverting the democratic process in Jammu and Kashmir, resorted to the use of terrorist groups in order to promote its territorial ambitions. It therefore deserved to be declared a terrorist State.

82. The Sub-Commission should without delay condemn all countries which, ignoring the appeals of the international community, sponsored and encouraged terrorism and call for the perpetrators of terrorist acts committed in Jammu and Kashmir to be tried and sentenced by an appropriate international tribunal, and should publicly censure the countries which sheltered terrorists in their territory and provided them with political and material support.

The meeting rose at 1.05 p.m.